IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVI APPELLATE SIDE JURISDICTION

WRIT PETITION NO 2226 OF 2005

M/s Sheetal Ashish Hotel Pvt Ltd....Petitioners

vs

Ravi R Nigam and ors.. ..Respondents

Mr. V.B.Naik for petitioners

None for respondents

CORAM: S.U.KAMDAR J.

Dated 5.l2.2005

P.C:

l. Rule, returnable forthwith. None appears for the respondents though served.

2. The respondents are absent despite service. Affidavit of service has been filed which has been taken on record.

3. By the present petition the impugned order passed by the Cooperative Appellate Court Mumbai dated 23.ll.2004 in Appeal No. 53 of 2005 and A.O.No.74 of 2004. The learned counsel for the petitioners restricts his challenge only to the part of the said order by which the petitioners rights for utilising car parking space purchased by them from the builder is restricted. This

restriction on the car parking spaces to be used by the petitioner is on the basis that petitioners are holding six units in the said building. The learned counsel for the petitioners has drawn my attention to the agreement dated 25.7.200l at Exh B to the petition particularly clause 5 thereof under which the petitioners have purchased l4 car parking spaces. He has also drawn my attention to the fact of the payment made by the petitioners by cheques at the relevant time in the years l999 and 200l towards the purchase of car parking spaces. The learned counsel for the petitioners contend that the said purchase of car parking space has been made by the petitioners from the builder much prior to the society being incorporated. However in a dispute between two members and the society the rights of the petitioners have been affected by which the car parking spaces used by the petitioner are restricted to six in number though they purchasers of l4 car parking spaces. Prima facie order passed by the Coop Appellate Court restricting the right of the petitioners to six car parking space inspite of having title by purchase thereof of l4 car parking spaces is absolutely erroneous and unsustainable in law.

4. In that light of the aforesaid the order passed

by the Coop Appellate Court in so far as the restriction on the number of car parking spaces as provided therein is quashed and set aside. Rest of the order is maintained. It is clarified that the petitioners will be entitled to use all the l4 car parking spaces as per the agreement for sale being clause 5 of the agreement dated 25.7.200l subject to their complying with all necessary terms and conditions specified in that behalf by the society. Petition is made absolute accordingly with no order as to costs.